DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 19 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

ORIGINAL

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Deployment of Wireline Services Offering | ) | CC Docket No. 98-147 |
| Advanced Telecommunications Capability | ) | |
| | ) | |

To: The Commission

**JOINT PETITION FOR PARTIAL CLARIFICATION OR RECONSIDERATION**

Association for Local Telecommunications Services, e.spire Communications, Inc., KMC Telecom, Inc. McLeodUSA Telecommunications Services, Inc. and NuVox, Inc., (collectively, the "Joint Petitioners"), by their attorneys, hereby petition the Commission to clarify, and if necessary, reconsider, one aspect of its *Collocation Remand Order* released on August 8, 2001.[1] The Joint Petitioners consider that the *Collocation Remand Order* is a very important pro-competitive initiative. Nevertheless, the Joint Petitioners believe that the treatment of the crucial issue of cross-connects in the *Collocation Remand Order* is problematic in two principal respects: (i) the Commission's stated reliance upon state regulators to enforce its cross-connect rules; and (ii) the absence of any specific guidance as to how cross-connects are to be priced and offered to competitive carriers. The Joint Petitioners firmly believe that the issue of cross-connects should be handled – and enforced – at the federal level, and that incumbent local exchange carriers ("ILECs") should be required to tariff rates, terms and conditions for cross

[1] Deployment of Wireline Service Offering Advanced Telecommunications Capability, Fourth Report and Order in Docket No. 98-147, FCC 01-204 (rel. Aug. 8, 2001) ("Collocation Remand Order").

No. of Copies rec'd 014
List ABCDE

connects in their interstate tariffs. Based on the language of the *Collocation Remand Order*, the Joint Petitioners believe that partial reconsideration of the *Collocation Remand Order* with respect to the issue of cross-connects is necessary, as well as further clarification to elaborate in detail the Commission's intent with regard to the manner in which ILECs offer cross-connects.

## I. INTRODUCTION

The *Collocation Remand Order* is a significant and progressive step in the continued development of competitive alternatives in the local telecommunications market. The Commission clearly heeded the calls of competitive carriers for a constructive re-appraisal of the collocation rules: the new rules and the discussion underlying them reflect the agency's firm and detailed grasp of CLEC concerns. Moreover, the *Collocation Remand Order* is forward-looking, embracing the shifting requirements of the new technologies and practices that will define the next generation of networks.

Of particular importance is the Order's broad ruling allowing collocation of multifunction equipment that is critical to deployment of next generation networks by competitors. In addition, the Joint Petitioners applaud the Order's acknowledgment of the crucial nature of cross-connects that allow competitive local exchange carriers ("CLECs") to share traffic at the ILEC central office – a natural point of aggregation in the public telephone network. Cross-connects are also critical to the growth of competitive transport, because they allow CLECs to interconnect to competitive transport providers at these natural points of aggregation.[2] The Commission acted correctly and in the interest of the public when it required that ILECs provide cross-connects to their competitors.

---

[2] *See* Collocation Remand Order at ¶¶ 63-66.

However, one sentence in the *Collocation Remand Order* significantly undermines the utility of the Commission's stated position on cross-connects: the Commission stated that it "anticipates" that cross-connect disputes "can be addressed in the first instance" at the state level.[3] To the extent that this signals the Commission's intent to hand over the enforcement of cross-connects to state regulators (who would be called upon to enforce the federal rules), this portion of the *Collocation Remand Order* must be reconsidered. In addition, some clarification is required to specify the precise manner in which cross-connect offerings are to be made available, and priced, by ILECs.

## II. THE COMMISSION SHOULD CLARIFY ITS INTENT TO ENFORCE ITS CROSS-CONNECT RULES, AND RESOLVE DISPUTES

Following a detailed discussion outlining the legal bases underpinning the Commission's authority to order ILECs to furnish cross-connects to their competitors (Sections 201 and 251(c)(6) of the 1996 Telecommunications Act), the Commission states as follows:

> As has been the practice in the past, we anticipate that cross-connect disputes, like other interconnection related disputes, can be addressed in the first instance at the state level.[4]

This terse statement is the only obvious indication in the *Collocation Remand Order* of the Commission's intent with regard to the interpretation and enforcement of ILEC cross-connect obligations. Although the Commission adopted rules requiring ILECs to provide cross-connects, the Order appears to leave the interpretation and enforcement of those rules to state regulators. If this is not the Commission's intent, additional clarification that better elaborates how the rules will be administered, interpreted and enforced is needed. However, to the extent that this

---

3 *Collocation Remand Order* at ¶ 84.

4 *Collocation Remand Order* at ¶ 84.

language constitutes the Commission's intent to defer to the state regulators the task of administering, interpreting and enforcing the cross-connect rules it has just adopted, this portion of the Commission's Order must be reconsidered, for several reasons.

First, removal of the authority to interpret and enforce the cross-connect rules from the federal to the state jurisdiction takes the "teeth" out of the rules altogether, and invites nearly endless, state-by-state litigation. Multi-state CLECs would have to seek remedies from multiple states, incurring substantial costs and delays. Such a situation plays into the hands of the ILECs, which, since the enactment of the 1996 Telecommunications Act, have demonstrated their willingness and ability to initiate extensive – and often meritless – litigation as a means of delaying implementation of the Act's pro-competitive mandates, and as a means of taxing the resources of their smaller competitors.

Second, even if CLECs were prepared to engage in a state-by-state struggle to obtain fair rates, terms and conditions for the cross-connects they need in order to compete, this would inevitably result in a patchwork quilt of inconsistent state positions, which would ultimately have to be revisited either in court or before the Commission – or both – before a final resolution could be reached. This resolution could be years in the future, depriving CLECs of many if not most of the intended benefits of the Commission's rules, while they fight expensive battles, using up resources that can never be recovered. The prospects of litigating the cross-connect rules on a multi-state basis, and the concomitant delays in implementing cooperative, mutually-beneficial arrangements with other competitive carriers are especially unwelcome during difficult financial times such as the present, when reducing expenses and building new revenues are critical to CLECs' success.

Third, relying on state regulators to set rates for cross-connects opens the door to a collage of nagging rate disputes that are virtually impossible to resolve. In setting rates for jurisdictionally interstate services, state regulators will use widely differing costing methodologies, often requiring time-consuming and expensive generic rate proceedings. Clearly, relying on the states to set rates for jurisdictionally interstate cross-connects using state ratemaking standards would cause delay and uncertainty, and likely would not be sustainable on appeal. ILECs could easily game such ratemaking proceedings to delay the availability of the cross-connects themselves.

It would be similarly erroneous to rely upon the states to interpret and apply federal pricing standards for cross-connects. This the least efficient method of implementing the Commission's cross-connect rules, virtually inviting appeals and wasting of time and resources. Now that the Commission has found that it is empowered to require cross-connects under Section 201 of the Act, it should not hesitate to use that authority to enforce the new rules in an efficient and consistent manner, using the resources of the Enforcement Bureau and the Competitive Pricing Division. The history of disputes over collocation and enhanced extended links ("EELs") are the best evidence that ILECs will find innovative ways to frustrate and delay requests for cross-connects. Speedy, efficient Commission enforcement is critical to near-term availability.

A recent change to Verizon's FCC Tariff No. 1 illustrates the practical problems that CLECs will face in getting the cross-connect rules implemented. Verizon changed its cross-connect provisions on July 6 of this year: in doing so, Verizon simply chose – apparently at random – what the rates, terms and conditions of its cross-connect offering would be. For example, Verizon only allows cross-connects at the DS3 level, and does not allow single DS1

cross-connects. Similarly, Verizon's tariff apparently does not allow dark fiber cross-connects.[5] The recurring and non-recurring charges have no apparent cost basis: non-recurring charges of up to $2,464 are imposed, in addition to multiple charges for cross-connects, "service connections," and SPOT bay charges.[6] Moreover, there are no provisioning intervals for cross-connects set forth in Verizon's tariff. Overall, although Verizon correctly chose to tariff rates, terms and conditions for cross-connects in its interstate tariff, the tariffed provisions are nevertheless deficient in many respects.[7] This is arguably indicative of what is likely to happen if the ILECs are essentially left on their own to fashion rates, terms and conditions for cross-connects without any specific guidance from the Commission.

How are 50 discrete state public utility commissions (and the District of Columbia Corporation Commission) likely to cope with the multitude of issues raised by this sort of ILEC treatment of cross-connects (especially if these requirements appear in an ILEC's *federal* tariff)? Moreover, it should be kept in mind that Verizon's handling of the cross-connect issue is just one of several configurations that are likely to crop up in response to the Commission's rules. It is exceedingly unlikely, given the Commission's sparse guidance, that any uniformity in approach will result. The likely disparities in treatment of cross-connects from jurisdiction to jurisdiction

---

5 Verizon Tariff FCC No. 1, Section 19.7.2(B).

6 *See id.*

7 With respect to its justification for the cross connects rates, in its transmittal filing for its July 6, 2001 tariff revisions, Transmittal No. 59, Verizon claims that its cross connect rates were the result of a coalition (MCI, Sprint, and AT&T) agreement in its "southern" states. Only NJ, PA, and DE have actually approved the new tariff. The settlement agreement has been filed, but not approved, in the other states. One CLEC, Cavalier Telephone, has filed complaints with the VA State Corporation Commission and the MD Public Utility Commission regarding this settlement agreement (and specifically the cross connect charges). These complaints are still pending as of this writing.

will only serve to impede the growth of competitive alternatives: CLECs with a national scope need to be able to create national business plans that can be consistently implemented and prosecuted across the country. Leaving the interpretation and enforcement of the Commission's rules to each individual state does not provide the consistency and ability to plan so desperately needed by competitive companies.

Commissioner Martin's separate statement with respect to the *Collocation Remand Order* expresses his concern that the Commission might be seeking to enable state public utility commissions to determine cross-connect issues in the context of interconnection agreements.[8] He cautioned that, particularly "in an area that has been plagued by court reversals and shifting rules," the Commission "should be concerned with providing much-needed regulatory stability."[9] To achieve this needed stability in the area of cross-connects, the Commission should clarify or reconsider its stated intent to pass the baton to the states, and should take direct responsibility for enforcing these rules through its informal and formal complaint procedures, and its accelerated dispute resolution processes. Acceptance of the responsibility of interpreting and enforcing its own rules is entirely consistent with the oft-repeated emphasis of the Commission's Chairman on the importance of enforcement endeavors,[10] and will streamline the process of establishing uniform standards that support the development of the competitive telecommunications industry.

---

8 *Collocation Remand Order*, Statement of Commissioner Kevin J. Martin, Approving in Part and Concurring in Part.

9 *Id.* at 1.

10 Summary of Testimony of FCC Chairman Michael K. Powell Before the Subcommittee on Commerce, Justice, State and the Judiciary of the Senate Committee on Appropriations, June 28, 2001 (available at http://www.fcc.gov/Speeches/Powell/Statements/2001/stmkp128.html)

## III. THE COMMISSION SHOULD CLARIFY THAT ALL ILECS SUBJECT TO COLLOCATION RULES MUST SET FORTH THE RATES, TERMS AND CONDITIONS FOR CROSS-CONNECTS IN THEIR FEDERAL TARIFFS, AS VERIZON HAS ALREADY DONE

As a necessary adjunct to the process discussed above, the Commission should clarify that all ILECs subject to the collocation rules are required to set the rates, terms, and conditions for cross-connects in their federal tariffs, as Verizon has done. Because the Commission has unquestioned authority to require the cross-connects, and to establish their rates, terms and conditions under section 201 of the Act, such action would protect the Commission against having its cross-connect rules reversed on appeal, would be consistent with the Commission's repeated assertions that it will vigorously enforce the Communications Act,[11] and will protect CLECs against undue cost and delay in obtaining the cross-connects that they require.[12] If there are disagreements about interpretation of the Commission's rules, or their implementation, including issues of provisioning intervals, and the rates, terms and conditions under which the cross-connects are to be offered, they can be resolved expeditiously, in one bold stroke, rather than piecemeal, over the painful course of years, by the states and the court system.[13]

---

11 *See, e.g.*, footnote 8, *supra*.

12 Based on the industry's experience with EELs, one potential source of delay is the insistence of ILECs that interconnection agreements be amended to reflect the new rules prior to making cross-connects available. These amendments can take months to conclude, and since they must be agreed to by both parties, their completion is at least partially at the discretion of the ILECs. Requiring that cross-connects be set forth in ILEC interstate tariffs sidesteps this potential quagmire, but only if ILECs are not permitted to interpose similar delays in the tariffing process. Accordingly, the Commission should require that cross-connects be tariffed by ILECs on or before a date certain.

13 In any event, the Commission should specifically mandate that Individual Case Basis ("ICB") pricing *may not be used* in pricing cross-connects. The unit costs of the elements involved in cross-connects are not indeterminate, and the cross-connects themselves are not arcane or unusual facilities. Accordingly, firm prices must be specified for cross-connects, and those prices must have an identifiable cost basis.

## III. CONCLUSION

For the reasons set forth above, the Joint Petitioners request that the Commission clarify or reconsider the *Collocation Remand Order* to acknowledge that jurisdiction over the interpretation and implementation of the cross-connect rules, including the resolution of any and all cross-connect disputes, remains squarely in front of the Commission, utilizing the informal and formal complaint process, as well as the accelerated dispute resolution process. In addition, the Joint Petitioners request that the Commission clarify its Order to mandate that specific rates, terms and conditions for cross-connects must be tariffed by ILECs at the federal level, and on or before a date certain.

Respectfully submitted,

**ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

**E.SPIRE COMMUNICATIONS, INC.**

**KMC TELECOM, INC.**

**MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

**NUVOX, INC**

By _____

Jonathan E. Canis
Ronald J. Jarvis
KELLEY DRYE & WARREN LLP
1200 19th Street NW, Suite 500
Washington, DC 20036
(202) 955-9600 Telephone
(202) 955-9895 Facsimile

Their Attorneys

Date: September 19, 2001

**CERTIFICATE OF SERVICE**
**File Nos. EB-01-MD-001 and EB-01-MD-002**

I, Beverly Harper-Jones, hereby certify that true and complete photocopies of the foregoing "Joint Petition for Reconsideration and/or Clarification" were served September 19, 2001 via courier on the following:

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(original plus four copies)

Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kyle Dixon
Legal Advisor
Office of Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Kdixon@fcc.gov

Bryan Tramont
Senior Legal Advisor
Office of Commissioner
Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Jordan Goldstein
Senior Legal Advisor
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Legal Advisor
Office of Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dorothy Attwood
Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Dattwood@fcc.gov

Qualex International
Room CY- B402
445 12th Street, SW
Washington, DC, 20554.

Beverly Harper-Jones